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Summary of Amendment to the Contract for the Massachusetts Enhanced Emissions and Safety Inspection Program

June 1, 2004

The current Massachusetts Enhanced Emissions and Safety Test Program was established by the Legislature in Chapter 210 of the Acts of 1997. The statute directs the Department of Environmental Protection (DEP) and the Registry of Motor Vehicles (RMV) to implement a decentralized vehicle inspection program using a private network contractor. The agencies signed a seven-year contract with Keating Technologies, Inc. (which has become Agbar Technologies, Inc.) in March 1999 to implement this Program.

On June 1, 2004, DEP and RMV signed a Contract Amendment with Agbar Technologies. The Contract Amendment has been designed to:

- Improve the accuracy and reliability of testing equipment;
- Improve responsiveness to inspection stations with equipment problems;
- Implement Program improvements that support the testing of newer vehicles;
- Establish clear and measurable performance requirements with strong financial incentives; and
- Improve reporting to the agencies to allow better tracking of performance.

A number of Contract revisions are needed to implement these changes. These are summarized below.

1. Equipment Performance: Specifically, the Contract Amendment requires Agbar to:

- *Upgrade or replace equipment.* The amended contract requires Agbar to upgrade or replace all equipment within nine months, at no additional cost to motorists, station owners, or the Commonwealth. This will include:
 - ✓ Replacing equipment unable to meet new reliability standards;
 - ✓ Upgrading equipment to improve measurement of nitrogen oxide emissions;
 - ✓ Upgrading bar code scanners for improved identification of vehicles; and

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- ✓ Adding computerized test equipment capable of testing newer vehicles equipped with Controller Area Network (“CAN”) On-Board Diagnostic (OBD) systems.

Agbar has estimated that these equipment improvements could cost up to \$15 million dollars.

- *Maintain the equipment to meet specific reliability standards.* The test equipment must work reliably enough so that it consistently identifies vehicles with emission systems that need to be repaired. The Contract Amendment establishes specific standards for determining whether the equipment is working at a sufficiently high level of reliability:
 - ✓ Equipment components that are critical for accurately measuring vehicle emissions (identified as “Tier 1” equipment components) must achieve a 90% reliability rate, based on random audits performed by DEP or its auditing contractor;
 - ✓ Non-critical equipment components (identified as “Tier 2” equipment components) must achieve an 85% reliability rate, based on random audits performed by DEP or its auditing contractor; and
 - ✓ Tier 1 equipment components that are repaired after failing an initial random audit must achieve a 95% reliability rate based on follow-up audits performed by DEP or its auditing contractor.

To ensure that these reliability standards are met, Agbar will:

- ✓ Audit each inspection station quarterly to identify equipment that needs to be repaired;
- ✓ Implement comprehensive quality control measures (including Statistical Process Controls) to identify degrading equipment before it fails;
- ✓ Automatically lock test systems out of the computer network when they fail periodic self-checks so they cannot be used until they are repaired; and
- ✓ Provide DEP and RMV with improved data and reports that document implementation of these requirements.
- *Improve Service to Inspection Stations.* Agbar is specifically required to respond to service calls from inspection stations within one business day, and to complete any repairs within four business days. Stations will be compensated if their inspection equipment is “down” for excessive periods due to Agbar’s inability to correct equipment problems.
- *Timeline for Implementation:* The Contract Amendment requires Agbar to:
 - ✓ determine within 30 days of signing the Amendment whether any equipment will need to be replaced because it is not likely to meet the Tier 1 reliability standard described above; and
 - ✓ complete all equipment upgrades and replacements within nine months of the Amendment

DEP will start conducting independent audits of upgraded and new equipment after the equipment is brought on-line, to determine whether the reliability standards are being met. Agbar will pay damages to the Commonwealth if it does not meet the reliability standards, starting one year after the Contract Amendment is signed.

2. Accountability and Oversight: Several provisions hold Agbar and the station owners accountable for meeting the Contract's performance standards, and strengthen the Agencies' ability to ensure that Agbar complies with these standards. These provisions include the following:

- **Contract Extensions:** The original contract runs through September 30, 2006, but allowed DEP and the Registry to authorize up to two one-year extensions. The Contract Amendment requires that Agbar meets the following performance standards to obtain extensions:
 - ✓ To obtain a 1-year contract extension, Agbar must meet all milestones for upgrading and replacing equipment, and must maintain an overall 90% reliability rate for the most critical equipment components (Tier 1) from May 26, 2005 through April 30, 2006; and
 - ✓ To obtain a second one-year extension, Agbar must maintain an overall 90% reliability rate for Tier 2 equipment components from May 26, 2006 through April 30, 2007.
 - ✓ If Agbar fails to meet either of these requirements, it loses its assurance of contract extensions, although DEP and RMV are allowed to grant them.
- **Liquidated Damages:** The Contract Amendment establishes payments that Agbar will make ("liquidated damages") if it fails to meet the performance standards for specific aspects of the Program, including the Tier 1 and Tier 2 equipment reliability standards described above. The Amendment eliminates the original contract's \$120,000 quarterly cap on liquidated damages, increases the number of performance standards subject to liquidated damages and assigns specific payment levels for each, streamlines the assessment process, and provides for a dedicated escrow account that DEP and RMV can access for payment.
- **Station Fees:** If a workstation is inoperable for an extended period, the Contract Amendment requires Agbar to discount the next month's fee based on the amount of time the equipment has been inoperable.
- **Station Responsibilities:** The Contract Amendment requires Agbar to lock out stations that fail to properly maintain test system components for which they are responsible. Once locked out, stations will not be able to conduct inspections until the equipment is repaired and functioning properly. Stations will be required to conduct daily leak checks (these are now conducted every three days) to ensure system integrity, and will need to properly maintain their filters.

3. Financial Impact: The Contract Amendment will not increase the inspection fee that motorists currently pay (\$29 per test). Agbar will invest significant resources in equipment upgrades and replacements, with no additional expense for motorists, station owners or the Commonwealth. The Contractor is providing its own financing; the Commonwealth is not obligated to guarantee the cost of the equipment upgrades and replacements.